Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

SPRING TERM, 1979

No. 78-1417

BRYAN M. HANSEN,
Appellant,

v.

MINNESOTA STATE BOARD
OF BAR EXAMINERS, et al.,
Appellees.

On Appeal from the Supreme Court
of Minnesota

JURISDICTIONAL STATEMENT

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March 9, 1979

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provisions, Statutes and Rules Involved	2,3
Statement of the Case	3,4
The Question is Substantial	5-8
Conclusion	9
Appendix	10
Opinion of the Supreme Court of Minnesota	11
Order	29
Dissenting Opinions	30-32
Orders leading to denying the Petition for Rehearing	33
Notice of Appeal	34
Proof of Service	35

TABLE OF CITATIONS

Cases:

	Page
Dept. of Banking v. Pink, 317 U.S. 264 (1942)	2
Dunn v. Blumstein, 405 U.S. 330 (1972)	8
Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (E.D.N.C. 1970)	7
Market Street Railway Co. v Railroad Commission of California, 324 U.S. 548, reh. den. 324 U.S. 890 (1945)	2
Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974)	8
Moore v. the Superior Court of South Carolina, 44 F. Supp. (D.C.S.C. 1977)	8
Murphy v. Pennsylvania State Board of Bar Examiners, et.al., 393 A.2d 369 (1978)	6
Schware v. New Mexico Board of Bar Examiners, 353 U.S. 232 (1957)	5
Shapiro v. Thompson, 394 U.S. 618 (1969)	8

Constitutional Provisions: Page

United States Constitution:

Article VI	2
Amendment XIV	3

Statutes:

United States Code

Title 28, Section 1257 (2)	2

Minnesota Statutes

Section 481.01	3

Rules: Page

United States Supreme Court Rules

Rule 13 2

Minnesota, Admission to the Bar Rules

Rule II (4) 3

IN THE

SUPREME COURT OF THE UNITED STATES

Spring Term, 1979

No. ____

BRYAN M. HANSEN,
Appellant,

v.

MINNESOTA STATE BOARD OF
BAR EXAMINERS, et. al.,
Appellees.

On Appeal from the Supreme Court of Minnesota

JURISDICTIONAL STATEMENT

Bryan M. Hansen, the Appellant, appeals from the final judgment of the Supreme Court of Minnesota, entered December 27, 1978, denying his petition for rehearing, thereby excluding him from the Minnesota bar examination.

This statement is presented here to show that the Supreme Court of the United States has jurisdiction in this matter and that substantial questions are presented by the decision of the Supreme Court of Minnesota.

OPINIONS BELOW

The opinion of the Supreme Court of Minnesota from which this appeal is taken is not yet reported. A copy appears in the appendix hereto.

In an order dated December 27, 1978, the Supreme Court of Minnesota denied a petition for rehearing, as yet unreported, and appears in the appendix hereto.

JURISDICTION

On November 28, 1978, a petition for rehearing was timely filed in the Supreme Court of Minnesota, thereby tolling the running of the period limited by Rule 13 of the United States Supreme Court. See Market Street Railway Commission of California, 324 U.S. 548, reh. den. 324 U.S. 890 (1945); Dept. of Banking v. Pink, 317 U.S. 264 (1942).

A subsequent notice of appeal to this Court was duly mailed to the Supreme Court of Minnesota on March 9, 1979. A copy of the Notice and Proof of Service are attached.

This appeal is being docketed in this Court within 90 days from the entry of the final judgment denying the petition for rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (2).

QUESTIONS PRESENTED

Whether the denial of an individual's application to sit for the Minnesota bar examination, on the sole ground that he did not graduate from a law school approved by the American Bar Association, violates the due process and equal protection guarantees of the Fourteenth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

United States Constitution, Article VI:

"This Constitution...shall be the supreme Law of the Land and the Judges in every state shall be bound thereby."

United States Constitution, Amendment XIV:

No State...shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Minnesota Statute, Section 481.01 (1976):

The Supreme Court...shall, by rule from time to time, prescribe the qualifications of all applicants for admission to practice law in this state.

Rule II, Rules of the Supreme Court of Minnesota for Admission to the Bar (1976):

No Person...shall be admitted to practice law who has not established to the satisfaction of the State Board of Law Examiners:

"...(4) that he has graduated from an approved law school."

The state of Minnesota has determined that an approved law school can only be a law school that is provisionally or fully approved by the Section of Legal Education and Admissions to the Bar of the American Bar Association.

STATEMENT OF THE CASE

Appellant, a native of Minnesota, graduated from Western State University, College of Law, placing in top 95th percentile of his class. Before his studies began at Western State University, Appellant graduated from Brown University and was accepted to Marquette University, School of Law. He attended Marquette for one month before transferring to Western State University. He took his law degree in 1977, passed the California bar examination on his first attempt, and was admitted to the bar of the Supreme Court of that state in January, 1978.

In 1976, Appellant applied to write the July 1977 Minnesota bar examination, but his application was denied by the Minnesota State Board of Law Examiners based on Appellant's failure to show graduation from an "approved law school", as required by Rule II (4) of the court rules for admission to the Minnesota bar. Thereafter, Appellant complied with the Board's procedures, by filing a petition with them for a waiver of this rule.

A petition for a hearing on the waiver was filed with the Supreme Court of Minnesota in March of 1977, and denied. Finally, on March 3, 1978 the Supreme Court of Minnesota granted Appellant a hearing on a petition for reconsideration.

Representing himself at the hearing, in May of 1978, Appellant challenged the constitutionality of the ABA-approval only requirement as repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The Minnesota Supreme Court found that "petitioner's argument that Rule II (4) is an unconstitutional violation of the due process clause of the Fourteenth Amendment has no merit. Likewise, we find no violation of the equal protection clause". The court affirmed the Board's decision denying Appellant's request for a waiver of Rule II (4).

Appellant's petition for rehearing was denied and final judgment was entered on December 27, 1978, a copy of that judgment is contained in the appendix. Appellant now properly appeals this matter to the United States Supreme Court.

THE QUESTION IS SUBSTANTIAL

To begin, the Minnesota legislature has carefully recognized the court's power to prescribe regulations for admission to the bar by enacting Minn. Stat. 481.01, which indicates that the Minnesota Supreme Court shall "by rule from time to time, prescribe the qualifications of all applicants for admission to practice law in this state". There can be no question that this power includes the power to amend, modify or waive such regulations, either generally of specifically.

Appellant does not challenge the legitimacy of the state's interest in regulating the bar admission standards, but strongly contends that such regulations, including Rule II (4) in controversy here, are subject to the same constitutional restraints as any exercise of state control over the practice of law. That is to say:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravenes the Due Process or Equal Protection Clause of the Fourteenth Amendment."

Schware v. New Mexico Board of Bar Examiners, 353 U.S. 232 at 238-239 (1957).

Beginning with due process, Appellant argues that not only does his denial to sit for the Minnesota bar examination by the Minnesota State Board of Law Examiners deny his constitutionally-guaranteed rights, but contravenes them word for word.

The leading case in this area is Schware v. New Mexico Board of Bar Examiners, 353 U.S. 232 (1957), which struck down New Mexico's refusal to admit petitioner to practice law as unconstitutional on the grounds that he had not demonstrated "good moral character". The court's majority noted that a discussion whether the practice of law is a "right or a privilege" was unnecessary. "Regardless of how the state's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons," 353 U.S. 232 at 239.

In view of Schware, supra, the case at bar presents the question of whether a particular standard established by a state should be blindly adhered to when such rule "offends the dictates of reason" and is "wholly arbitrary" by denying admission to examination to a highly qualified attorney, merely because he has not followed the tradition of going to an ABA approved school.

At the time of Appellant's graduation, Western State University was fully accredited and approved by thirteen agencies including the Committee of Bar Examiners of the State of California (the accrediting agency for the State of California); the Western Association of Schools and Colleges (the national and regional accrediting agency for that area); the California State Department of Education; the California Superintendent of Public Instruction; the Association of Private Law Schools; the American Association of Private Law Libraries; the Southern California Association of Law Libraries; the United States Veterans Administration; the California Department of Health, Education and Welfare; the California State Competitive Graduate Fellowship Grants; the United States Department of Justice; the United States Army and the United States Marine Corps (for both in-service and off-duty educational benefits).

In a case similar to the present one, Murphy v. Pennsylvania State Board of Bar Examiners, et.al., 393 A. 2d 369 (1978), the majority opinion refused to allow applicant to sit for the bar because admission to the Pennsylvania bar examination required a law degree from a law school accredited by the ABA. However, the dissenting opinion in Murphy, supra, written by Mr. Justice Manderino is persuasive and indicative of a trend that supports Appellant's contentions. Not only does he seriously question the standards which guide the ABA in the exercise of approving law schools, but he in fact, indicates that there are none. Mr. Justice Manderino notes that the ABA is given "unlimited discretion to devise standards of accreditation as it alone sees fit. The interests of the ABA may of may not be the proper interests of a governmental body," 393 A. 2d 369 at 376.

Thus, Appellant insists that it is unreasonable to refuse admission to practice law to a native of Minnesota with a superior academic record, who is a member of good standing of the bar of a sister state, and who otherwise meets all of the qualifications for admission to the bar of his home state, simply and solely because his law school, while meeting accreditation standards of such sister state, was not approved by the ABA at the time of his graduation.

Appellant's equal protection claim reflects the fundamental unfairness just described and embodied in Rule II (4) which allows persons who are no more qualified than Appellant to sit for the Minnesota bar examination, while Appellant is forever banned from practicing law in his home state as long as he does not possess a law degree from an ABA-approved school.

States have an obligation to protect their citizens. This duty extends itself to the licensing of attorneys. States which feel that it is too burdensome to look into the qualifications of each school, probably have not looked into the qualifications of the A.B.A.'s approving program. What has been missed by this formula is simply this, that the citizens of the states do not get legal advice from schools, but instead from lawyers. Each lawyer is a person and must be judged on his merit. To say that all graduates of ABA law schools are good and that all graduates of non-ABA law schools lack merit, is to fly in the face of reason. What has happened is that the states do not check into the qualifications of prospective lawyers, but instead, they have relinquished their duty to a private organization. Because of this private organization, the Supreme Court of Minnesota now says that Bryan Hansen, a lawyer in California, cannot be a lawyer in his home state of Minnesota.

States have bar examinations. Each of these examinations are prepared by the states. These examinations test, or are supposed to test, the capacity of the prospective lawyer to practice law. This test should be the sole arbiter of who shall practice law. The case can be simply stated: Most states have an ABA requirement, and an extremely high pass rate on their bar examination. Yet, the quality of lawyers in this country is abysmal. Perhaps both requirements should be looked at very carefully.

Particularly pertainment in this area is a federal court case, Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (E.D.N.C. 1970), in which petitioners challenged a North Carolina rule requiring a one year residency period as a condition for taking the bar examination. Regarding this as an interference with the fundamental "right to travel", the court applied the stricter "compelling state interest" test and found none to justify the rule. It is also suggested that such a requirement might not even survive the traditional "rational basis" test as being too over-inclusive.

While some have urged that Moore v Superior Court of South Carolina, 44 F. Supp.(cert. den.) is compelling, the ABA requirement does more than merely discourages travel, but effectively prevents it by not allowing Appellant to seek employment in his chosen profession within his home state. Although the Supreme Court of the United States has not, as yet, extended the "freedom to travel" equal protection doctrine beyond the sphere of denial of basic necessities, there is a growing feeling among the courts today to recognize a fundamental "right to work". The increasing recognition of an inter-relationship between "right to travel" and "right to work" doctrines suggest that the type of restriction embodied in Minnesota's Rule II (4) be found comparable to the rigorous personal disadvantages which operate to prevent new residents from voting, Dunn v. Blumstein, 405 U.S. 250 (1974). These cases held that classifications which "penalize" the "right to travel" are constitutionally invalid in the absence of a compelling state interest. Such a situation exists in the matter presently before this Court. We contend that while there is a compelling state interest in protecting citizens from incompetent lawyers, the state has not attempted to protect that interest. Instead it has left this duty to the ABA, which has only one duty, to represent a private group.

CONCLUSION

In the light of Schware, supra, denial of Appellant's appeal would be contrary to what the Supreme Court of the United States in that case was trying to prevent.

> "Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason, offends the Due Process Clause," 353 U.S. 232 at 249.

Rather than deny relief, it would be more in line with the due process and equal protection clause of the Fourteenth Amendment of the United States Constitution and the individual states, if the courts not follow blindly the approving power of the American Bar Association; but to allow one of its citizens who has academically achieved success (and graduated from a school accredited in its state and nationally recognized) to sit for his home states bar examination.

For these and the reasons hereinmentioned, this Court should note jurisdiction of this appeal.

Respectfully submitted,

Vincent Jantz
Counsel for Appellant

APPENDIX

No. 217 Supreme Court

In re Application of
Bryan M. Hansen to Write
the Minnesota Bar Examination

48674

Kelly, Justice
Dissenting, Otis and
Yetka, JJ.

Endorsed
Filed November 9, 1978
John McCarthy, Clerk
Minnesota Supreme Court

S Y L L A B U S

1. As long as the requirements established by state supreme courts to regulate the practice of law are reasonable, they comply with applicable constitutional principles.

2. Rule II(4) of the Supreme Court Rules for Admission to the Bar, which requires an applicant to the Minnesota Bar to be a graduate of an ABA accredited law school is not an unreasonable requirement in light of the state's admitted interest in the qualification of those it admits to the legal profession and the rule's direct relationship toward that end.

3. It is rational for a state supreme court to conclude that the ABA is best equipped to perform the function of accrediting law schools and to utilize ABA findings in the administration of its rule. This does not constitute an unlawful delegation of judicial power.

4. There is no constitutional right to practice law in one's home state nor does Rule II(4) interfere with an applicant's right to travel.

5. There are no special circumstances which mandate the waiver of Rule II(4) in this case.

Affirmed.

Considered and decided by the court en banc.

O P I N I O N

KELLY, Justice.

This case comes before the court pursuant to petitioner's request for review of a decision by the State Board of Law Examiners (Board) that petitioner would not be allowed to sit for the Minnesota State Bar examination because he had not graduated from an approved law school as required by Rule II(4)[1] of the Supreme Court Rules for Admission to the Bar. We affirm.

Petitioner, originally a Minnesota resident, is a 1977 graduate of Western State University College of Law (Western State), San Diego, California. Although not admitted to the University of Minnesota Law School, petitioner had the opportunity to attend a number of the 166 law schools accredited by the American Bar Association (ABA). After one month at Marquette University Law School, petitioner decided to transfer to Western State Law School. Western State has never applied to the ABA for accreditation. It has been accredited both by the California Committee of Bar Examiners and by the Western Association of Schools and Colleges.

Prior to leaving Marquette petitioner had a conference with the Dean who advised him to remain at Marquette, partly because of its ABA-approved status. Nevertheless, petitioner decided to leave Marquette and enroll at Western State.

In the Fall of 1976, when petitioner was a senior student at Western State, he applied to the Board for permission to sit for the July, 1977, bar examination, The Board

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[1]Rule II delineates the general requirements for applicants who wish to sit for the bar examination. It reads as follows:

"No person shall be admitted to practice law who has not established to the satisfaction of the State Board of Law Examiners:

"(1) That he is at least 18 years of age;

"(2) That he is a person of good moral character;*

"(3) That he is a resident of this state; or maintains an office in this state; or has designated the Clerk of

(Footnote 1 continued)

the Supreme Court as his agent for the service of process for all purposes;

"(4) That he has graduated from an approved law school;**

"(5) That he has passed a written examination.

"* Character traits that are relevant to a determination of good moral character must have a rational connection with the applicant's present fitness or capacity to practice law, and accordingly must relate to the State's legitimate interest in protecting prospective clients and the system of justice.

"** An approved law school is a law school that is provisionally or fully approved by the Section of Legal Education and Admissions to the Bar of the American Bar Association."

denied his application because he was not a graduate of an approved law school. According to the Rules for Admission to the Bar, an approved law school is one "that is provisionally or fully approved by the Section of Legal Education for Admissions to the Bar of the American Bar Association."

Thereafter, petitioner requested and was granted a formal hearing before the Board, pursuant to Rule X, Rules for Admission to the Bar.[2] On March 11, 1977, after a full hearing, at which petitioner waived his right to appear, the Board found that he did not satisfy the requirements of Rule II(4) and therefore again denied him permission to sit for the bar examination.

On May 11, 1977, petitioner sought a hearing before this court which was denied on June 7, 1977. His request for a reconsideration of his petition, filed on August 22, 1977, was granted. During this interim period petitioner wrote and passed the California Bar Examination and was admitted to practice in California in January, 1978.

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[2] Rule X reads in pertinent part:

"The applicant may appeal to the Supreme Court from any adverse decision of the Board by serving upon and filing with the Director of Bar Admissions and filing in the office of the Clerk of the Supreme Court of the State of Minnesota, within twenty days of receipt by the applicant of the findings, conclusions of law and decision of the Board, a petition for review. The procedure upon the filing of such a petition shall conform to the rules of this Court, so far as applicable, for review of charges of the Lawyers Professional Responsibility Board. The Board of Law Examiners may employ counsel to present evidence and argument relating to the issues raised by the petition for review in the same manner, within the same times and to the same extent as the Director of Lawyers Professional Responsibility in proceedings pursuant to the rules of this court on Professional Responsibility may do."

This case presents the following issues for decision:

(1) Whether Rule II(4) of the Supreme Court Rules for Admission to the Bar is constitutional; and,

(2) Whether, granting its constitutionality, the requirement of graduating from an ABA-accredited law school should be waived in this case.

1. Petitioner and Western State, as amicus curiae, suggest that Minnesota's rule requiring proof of graduation from an ABA-approved law school as a prerequisite to sitting for the bar examination is unconstitutional under both the due process and the equal protection clauses of the Fourteenth Amendment to the United States Consitution. We disagree. As long as the requirements established by state supreme courts to regulate the practice of law are reasonable ones, they comply with applicable constitutional principles.

All United States Supreme Court decisions concerning state regulation of the practice of law recognize that a state has a substantial interest in the qualifications of those it admits to the legal profession. See, e. g., In re Griffiths, 413 U. S. 717, 725, 93 S. Ct. 2851, 2856, 37 L. ed. 2d 910, 917 (1973); Schware v. Board of Bar Examiners, 353 U. S. 232, 239, 77 S. Ct. 752, 756, 1 L. ed. 2d 796, 801 (1957). As the Supreme Court noted recently in Goldfarb v. Virginia State Bar, 421 U. S. 773, 792, 95 S. Ct. 2004, 2016, 44 L. ed. 2d 572, 588 (1975):

> "* * * (T)he States have a compelling interest in the practice of professions within their boundaries, and * * * as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners * * *. The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been "officers of the courts."

Nevertheless, the Court has also recognized that "(t)he practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character." Baird v. State Board of Arizona, 401 U. S. 1, 8, 91 S. Ct. 702, 707, 27 L. ed. 2d 639, 648 (1971). Thus, while "(a) state can require high standards of qualifications, such as good moral character or proficiency in its law, before it admits

an applicant to the bar, * * * any qualification must have a rational connection with the applicant's fitness or capacity to practice law." Schware v. Board of Bar Examiners, 353 U. S. 232, 239, 77 S. Ct. 752, 756, 1 L. ed. 2d 796, 801.

The test that emerges from these cases is that, despite the strong interest of the applicant in being able to practice law, the state can regulate admission as long as such regulation is reasonably related to its interest in a competent bar. A procedure is reasonable as long as it is not arbitrary and capricious. Only if the complainant is a member of a suspect class or if the procedure at issue violates a fundamental right must the state demonstrate a compelling state interest for its system of regulation to pass constitutional muster. See, e. g., In re Griffiths, 413 U. S. 717, 93 S. Ct. 2851, 37 L. ed 2d 910 (1973).

The procedure being challenged in this case is Minnesota's requirement that an applicant wishing to take the bar examination demonstrate, among other things, that he graduated from a law school which is provisionally or fully accredited by the American Bar Association.[3] Rule II(4), Supreme Court Rules for Admission to the Bar. Although there have been numerous challenges over the years to educational requirements similar to those of Rule II, both state and federal courts have consistently found such requirements to be constitutional.[4] See, Lombardi v. Tauro, 470 F. 2d 798 (1 Cir.) certiorari denied, 412 U. S. 919, 93 S. Ct. 2734, 37 L. ed. 2d 145 (1972);

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[3] This requirment is not unusual. According to the brief filed by the American Bar Association, only California and Indiana permit graduates of non-ABA-accredited law schools located outside their borders to take their bar examination, whereas 32 states explicitly limit admission to graduates of ABA-accredited schools and another 9 do so as a matter of practice. Section of Legal Education and Admissions to the Bar, American Bar Association, Law Schools' and Bar Admission Requirements: A Review of Legal Education in the United States - Fall 1976; See, also, 72 Mich. L. Rev. 1134; Rossiter v. Law Committee of the State Board of Law Examiners, Civil Action No. C-4767 (D. Colo. 1975), slip op. p. 5.

[4] The only case overturning a state requirement is Keenan v. Board of Law Examiners of State of N.C., 317 F. Supp. 1350 (E. D. N. C. 19.0). There the court held that the one-

year residency requirement to take the bar examination was unconstitutional because it created an unreasonable and arbitrary classification, it unnecessarily burdened the right to travel, and it arbitrarily denied petitioners the opportunity to practice their profession. But see, Shenfield v. Prather, 387 F. Supp. 676 (N. D. Miss. 1974), and Huffman v. Montana Supreme Court, 372 F. Supp. 1175 (D. Mont. 1974), aff'd mem., 419 U. S. 955, 95 S. Ct. 211, 42 L. ed 2d 172 (1974), which upheld the diploma privilege against a right to travel challenge. See, also, Hawkins v. Moss, 503 F. 2d 1171 (4 Cir. 1974) (reciprocity rule upheld as no infringement on right to travel); Moore v. Supreme Court of South Carolina, 447 F. Supp. 527 (D. S.C. 1977) (requirement of ABA accreditation does not violate right to travel). Minnesota rules do not require residency. See footnote 1, supra. Thus, Keenan has not application here.

Hackin v. Lockwood, 361 F. 2d 499 (9 Cir. 1966), appeal dismissed, 389 U. S. 143 (1967); Moore v. Supreme Court of South Carolina, 447 F. Supp. 527 (D. S.C. 1977); Murphy v. State Board of Law Examiners for the Commonwealth of Pa., 429 F. Supp. 16 (E. D. Pa. 1977); Potter v. New Jersey Supreme Court, 403 F. Supp. 1036 (D. N.J. 1975); Rossiter v. Law Committee of the State Board of Law Examiners, Civil Action No. C-4767 (D. Colo. 1975); In re Eisenson, 272 So. 2d 486 (Fla. 1973); State ex rel. Ralston v. Turner, 141 Neb. 556, 4 N. W. 2d 302 (1942); Henington v. State Board of Bar Examiners, 60 N. M. 393, 291 P. 2d 1108 (1956); In re Batten, 83 Nev. 265, 428 P. 2d 195 (1967); In re Lorring, 75 Nev. 330, 340 P. 2d 589 (1959); Application of Schatz, 89 Wash. 2d 604, 497 P. 2d 153 (1972); Rosenthal v. State Bar Examining Committee, 116 Conn. 409, 165 A. 211 (1933).

In all the decisions upholding a state's educational requirements as a valid prerequisite to admission to the bar, courts have required only that there be a rational reason for the imposition of the requirement. As the court stated in Application of Schatz (80 Wash. 2d___, 497 P. 2d 153, 156):

> "The policy of the board sets forth a condition precedent to take the bar examination in this state and it applies to all general applicants who are not otherwise qualified under the Admission to Practice Rules. It is correlative and explicit with the ultimate purpose of all regulations for the admission of attorneys to assure the courts the assistance of advocates of ability, learning, and sound character and to protect the public from incompetent and dishonest practitioners."

A similar theme is echoed in In Re Stephenson 511 P. 2d 136, 139 (Alaska 1973) overruled in other grounds in Avery v. Board of Governors of Alaska Bar Assoc., 576 P. 2d 488 (Alaska 1978):

> "* * * (T)he public interest in seeing that all members of the bar have an adequate education is a valid basis for an 'accredited schools' test, which insures that each applicant uniformly has performed the minimum required study. * * *

> "Moreover, it has been well established that educational standards such as those contained in the Alaska bar rule have a rational connection with an applicant's fitness to practice law. * * * By this means the state may be assured that attorneys have had suitable training by qualified instructors so that as lawyers they will be capable of adequately representing members of the public. The exchange of ideas between classmates and teachers, the legal knowledge, and the sense of ethics acquired through meeting requirements for graduation from an accredited law school are all reasonably related to the state's interest in seeing that those who hold themselves out to the public as attorneys at law, and thus as officers of the court, are properly qualified."

It is also rational for a state supreme court to conclude that the ABA is best equipped to perform the function of accrediting law schools. The Florida Supreme Court explained its reasons for requiring graduation from an ABA-accredited law school in LaBossiere v. Florida Board of Bar Examiners, 279 So. 2d 288, 289 (Fla. 1973):

> "We were persuaded to follow the American Bar Association standards relating to accreditation of law schools because we sought to provide an objective method of determining the quality of the educational environment of prospective attorneys. This was deemed especially necessary because of the rapid growth in the number of educational institutions awarding law degrees. We wished to be certain that each of these many law schools provided applicants with a quality legal education, but we were unequipped to make such a determination ourselves because of financial limitations and the press of judicial business.
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> * * * * * *
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> "* * * (W)e share the view of educators that growth in numbers and size must not be allowed to detract from the quality of a student's education. Accordingly, we continue to require that applicant's for admission to the Florida Bar Examination be graduates of accredited law schools."

A similar rationale compelled the three-judge federal court in Rossiter (supra. p. 12) to uphold Colorado's reliance on

ABA accredition:

> "No consideration is more critical in evaluating the qualifications of an applicant for admission to the bar than the quality and calibre of his legal education. A good lawyer must possess a complete and workable legal education; developed through exposure to many branches of law, contacts and communication with competent and professional instructors, experience in legal research and writing, interaction with other students, and access to current and complete research materials. Clearly, these demands compel the establishment and maintenance of standards and systems for the evaluation of institutions which propose to equip new attorneys to join the legal profession. It is also patently obvious that judicial bodies are singularly ill-equipped to bring to bear the resources and expertise necessary to conduct a case-by-case evaluation of United States and foreign law schools. For this reason, it is fortuitous that the American Bar Association, since early in this century, has undertaken to evaluate the law schools which train America's lawyers."

Prior to 1977 the ABA, as a matter of policy, refused even to consider accrediting proprietary law schools. Its opposition stemmed from its belief that the establishment of an educational institution for profit would have to affect negatively the caliber of the education provided to the students. When the goal of a law school is to make money, the reasoning went, the administration will skimp on services, and the students will necessarily suffer. More recently, however, persons within the ABA have challenged this assumption. In response to this pressure the ABA established a committee to study whether the organization should accredit proprietary law schools. The Committee to Study the Accreditation of Proprietary Law Schools recommended, however, that before the Association decided to modify the accreditation process, it should be sure of the incorrectness of its assumption that a school's proprietary status is a shorthand measure of other educational deficiencies. Thus, the Committee recommended that is should permit proprietary law schools to apply for provisional accreditation. If they are able to meet the other ABA requirements, the Association will permanently repeal the standard relating to nonproprietary status.

Petitioner also argues that he received a superior education at Western State and claims that it was much better than what was offered at Marquette, an ABA-accredited institution.[5] In spite of the changes in the ABA rules, he contends that the proscription against proprietary law schools is completely unrelated to a school's potential for educational excellence.

However, Western State did not exhaust its remedies by applying for accreditation and testing that proscription before the ABA and subsequently in this court. Petitioner's argument might have carried some weight a few years ago, but has been seriously undermined by recent events.

In order to implement this new position toward proprietary law schools, the Council of the Section of Legal Education and Admissions to the Bar resolved on February 12, 1977, that it was willing to grant variances to any proprietary law school that believed it could demonstrate substantial compliance with all other standards for accreditation. On June 18, 1977, it resolved to accept applications for provisional approval from proprietary law schools until June 30, 1979. Despite this waiver, Western State has never applied for provisional accreditation although it was invited to apply on two occasions. Thus, the ABA has not had the opportunity to determine whether it is in substantial compliance with the remaining standards.

Petitioner argues that if Western State were not a proprietary school it would certainly have been accredited, or, alternatively, that it is an excellent school whose excellence goes unrecognized by the ABA because of its proprietary nature. Western State contends that the fact of its accreditation by the California Committee of Bar Examiners and by the Western Association of Schools and Colleges either entitles it automatically to accreditation by the ABA or should cause this court to waive the requirement of ABA accreditation for graduates of Western State.

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[5] It is, of course, impossible for a student to evaluate the quality of an institution after attending it for only one month. Marquette is accredited by the Supreme Court of Wisconsin and the ABA.

But, as the ABA responds, we have nothing but the bare assertions of petitioner and his law school that Western State offers a quality education and is in substantial compliance with all relevant factors that go into the quality education formula. Because Western State has refused to apply for provisional accreditation, despite ABA requests that it do so, no ABA personnel have visited its campuses to evaluate its programs.[6] Thus, we have no way of knowing whether Western State could have substantially complied with the other ABA requirements for accreditation.

Had the ABA turned down the application of Western State, petitioner could have then approached us with his argument that the ABA standards are arbitrary and capricious. Under existing circumstances, however, there is no record on which we can determine the validity of petitioner's claim.

Clearly, it is reasonable for Minnesota to require proof that an applicant's legal education was of a high quality as a general prerequisite to admission to the bar. Similarly, it is neither arbitrary nor capricious for us to measure the quality of legal education with the same standards as those utilized by the ABA. This is particularly true as we would permit a review by this court if Western State were denied approval after applying. We then could judicially determine the validity of the ABA standards as applied to Western State. Western State has failed to exhaust its remedies by not applying for approval and then if turned down, seeking a review in this court. Thus, petitioner's argument that Rule II(4) is an unconstitutional violation of the due process clause of the Fourteenth Amendment has no merit.[7]

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[6] Both petitioner and his law school have extended to members of this court an invitation to visit Western State in order to permit the court to decide for itself whether the education petitioner received from Western State was educationally sound. It would be more beneficial has they extended this same invitation to the ABA's representatives who have more expertise regarding the components of quality education. If Western State is truly in substantial compliance with ABA requirements, as it implies in its brief, the latter course would have been preferable.

Footnote 7

[7] There is no irrebutable presumption created either. The requirement of graduation from an ABA-accredited law school is simply a general educational requirement which all applicants must meet. See, Rossiter v. Law Committee of the State Board of Law Examiners, Civil Action No. C-4767 (D. Colo. 1975); Application of Schatz, 80 Wash. 2d 604, 497 P. 2d 153 (1972). Moreover, this requirement is clearly related to our recognized interest in ensuring that members of the bar are educated in a competent manner. See, Goldfarb v. Virginia State Bar, 421, U. S. 773, 792, 95 S. Ct. 2004, 2016, 44 L. ed. 2d 572, 588 (1975); In re Griffiths, 413 U.S. 717, 725, 93 S. Ct. 2851, 2856, 37 L. ed. 2d 910, 917 (1973).

Likewise, we find no violation of the equal protection clause. Under traditional equal protection analysis classifications will be upheld as long as they are reasonably related to some legitimate governmental purpose. We have already established that the distinction between graduates of accredited and nonaccredited law schools is reasonably related to ensuring a competent bar. Thus, Rule II(4) does not operate to deny petitioner the equal protection of the laws. In an attempt to force us to apply a stricter standard of review than the rational-basis test, petitioner contends that he has some sort of right to practice law in his home state.

There is, of course, no merit either to this argument or to his position that Rule II(4) interferes with his fundamental right to travel. See, Moore v. Supreme Court of South Carolina, 447 F. Supp. 527 (D. S.C. 1977). Our rules do not require residency as an office in this state or appointment of our clerk of court as an agent for service will suffice.

Petitioner also argues that our adoption of Rule II(4) constitutes an unlawful delegation of power from the court to the ABA, a private organization. Petitioner misconstrues the relationship, however. We have not delegated our authority to the ABA but, instead, have simply made a rational decision to follow the standards of educational excellence it has developed. Furthermore, Western State could always petition this court for a review of any adverse decision by the ABA. We have neither the time nor the expertise to investigate individually the special training of an applicant or the program offered by specific law schools, and any attempt by us to do so would be inefficient and chaotic. Thus, it does not offend the constitution for us to decide to utilize instead standards developed by a nongovernmental body with expertise in the area of legal education. See, Rossiter v. Law Committee of the State Board of Law Examiners, Civil Action No. C-4767 (D. Colo. 1975); Rosenthal v. State Bar Examining Committee, 116 Conn. 409, 165 A. 211 (1935); LaBossiere v. Florida Board of Bar Examiners, 279 So. 2d 288 (Fla. 1973); Henington v. State Board of Bar Examiners, 60 N. M. 393, 291 P. 2d 1108 (1956); Application of Schatz, 80 Wash. 2d 604, 497 P. 2d 153 (1972). Deciding otherwise would violently interfere with our constitutionally mandated duty to hear and decide cases.

2. Petitioner and Western State both argue that whether or not the court decides that Rule II(4) is unconstitutional, petitioner still deserves to have the requirement waived. Four grounds are advanced to support such a waiver. Petitioner takes the position that because he believes that he is qualified by education and intellect to write the Minnesota bar examination, we should give him the opportunity to prove his qualifications to the court. He advances as a related argument that his passage of the California bar examination, which he describes as the most difficult examination in the country, demonstrates that he possesses the very qualities ABA accreditation is supposed to measure. Thus, we should waive Rule II(4) in his case. He also argues that extenuating circumstances require us to waive the rule. Finally, it is claimed that since other accrediting organizations, like the California Committee of Bar Examiners and the Western Association of Schools and Colleges, are as competent to accredit law schools as the ABA, we should waive Rule II(4) for graduates of law schools accredited by them. Each of these arguments has fatal flaws.

Petitioner fails to realize that once Rule II(4) is labeled as a reasonable attempt to measure the totality of one's law school experience rather than as an irrebutable presumption, no compelling reason to waive the requirement can be found. Furthermore, it would be impossible for petitioner to amass and present to the court, sufficient information about the operation of Western State to permit us to make a reasoned decision on the quality of the education he received there.

Rule II(4) represents our determination that many different experiences help to create a law school education that is likely to provide a potential attorney with the skills necessary to make him an effective member of his profession. Rule II(4) does not, however, contain a complete list of exactly what those experiences are. If pressed, it would be extremely difficult for members of this court to decide which factors are absolutely necessary to the creation of a well-rounded attorney and which are not. By adopting Rule II(4), we have chosen to leave these difficult questions

to the accrediting body in whom we have confidence. We also leave to the ABA the task of monitoring institutions to ensure that the standards are maintained even after accreditation is conferred. For these reasons permitting applicants from nonaccredited institutions to appear before either us or the Board, our agent, in order to attempt to demonstrate the educational validity of their law school experiences would serve no useful purpose. It makes much more sense for us to utilize the specialized services of our chosen accrediting agency, the ABA.[8] See, LaBossiere v. Florida Board of Bar Examiners, 279 So. 2d 288 (Fla. 1973).

The second basis for petitioner's claim to a waiver is the fact that he has passed the California bar examination and been admitted to practice law in the State of California. The mere passage of a bar examination in another state, however, does not necessitate a waiver of the educational fule of the state in which petitioner now seeks to practice. In re Stephenson, 511 P. 136 (Alaska 1973); In re Lorring, 75 Nev. 330, 340 P. 2d 589 (1959). We do not believe that passage of a bar examination is necessarily an equivalent measure of the characteristics of legal education which are important in the accrediting decision.

The only extenuating circumstance that petitioner presents is the inconvenience to him of practicing law away from his family. Yet, because he knew that his transfer to Western State could create this hardship, he cannot be heard to complain to us at this time. See, Application of Saunders, 295 F. Supp. 263 (D. V.I. 1969).

---

[8] Petitioner and Western State argue that because some states permit applicants to seek waivers of their rules, Minnesota should do likewise. Illinois, Iowa, Nevada and Wisconsin have all allowed Western State graduates to take their bar examination despite the existence of rules that would otherwise preclude them from doing so, and Indiana has repealed its rule requiring graduation from an ABA-accredited institution. While these examples may be instructive, they do not compel us to take a similar position. See, Application of Schatz, 80 Wash. 2d 604, 497 P. 2d 153 (1972).

Finally, we reject the contention that we should accept the decision of some other accrediting organization that Western State offers its students a quality education. The Western Association of Schools and Colleges is a general regional accrediting organization. According to the ABA, Western State is the only law school that it has accredited. Thus, we do not believe that its expertise is comparable to that of the ABA which specializes in evaluating legal education. Western State is also accredited by the California Committee of Bar Examiners, but we refuse to treat California's decision to accredit Western State as equivalent to our decision to approve only ABA-approved law schools because of the dissimilarity in the way California and Minnesota appear to control admission to the legal profession. California contains many law schools, only some of which are accredited either by the ABA or by the California Committee of Bar Examiners.[9] Even if one is not a graduate of a law school accredited either by California or by the ABA, however, it is still possible to take the California bar examination. Thus, California appears to utilize its examination as the major form of control over admissions to the bar. The situation in Minnesota is completely different. We use a two-pronged test-- graduation from an accredited law school plus passage of the bar examination--to determine whether an attorney should be admitted to practice.

Unlike California, we rely primarily on the educational process, and we use the bar examination only to weed out the small number who are unfit to practice law despite their exposure to educational environments of high quality. Given the different functions served by the bar examinations in California and Minnesota, it would be irrational for us to defer to California's decision regarding the quality of the education offered at Western State.[10]

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[9] All ABA-accredited law schools are automatically given accreditation by the California Committee of Bar Examiners. The Committee also accredits a number of law schools that, for some reason, are not accredited by the ABA.

[10] Although this issue was not fully developed during the oral argument, there is some evidence that the accrediting

(Footnote 10 continued)

standards used by California are far less stringent than those promulgated by the ABA. See, Peck, Minimum Educational Requirements for Admission to the California Bar, 45 Cal. S. B. J. 831. According to the brief filed by the ABA, in the July 1977 California bar examination, graduates of California-accredited schools had a significantly lower passage rate than those from ABA-accredited schools. Exactly how Western State graduates scored as a group, we have no way of knowing.

We agree with the position taken by the Washington Supreme Court, in response to an argument similar to petitioner's, that "(a) state is not required to subordinate its laws and policies concerning peculiarly domestic affairs and matters involving local sovereignty to the law and policies of other states." Application of Schatz, 80 Wash. 2d 604, ____, 497 P. 2d 153, 157 (1972).

Were petitioner able to demonstrate that Minnesota's rules regarding graduation from an ABA-accredited law school came as a complete surprise to him, there might be some support for the argument that principles of fairness require us seriously to consider waiving Rule II(4). Nothing forced petitioner to attend a nonaccredited law school, however. He chose to transfer from an ABA-approved school to a nonaccredited one far away from his home state knowing that this move would pose problems for him if he later wanted to return to Minnesota to practice law. Thus, equity requires no waiver here. Were we to grant the waiver as requested, we would have to consider similar requests by students from other nonaccredited law schools with chaotic results. Each and every case would have to be decided on its own merits. Undoubtedly claims would be made as in this case that the applicants had a quality education but without any foundation for such claims by experts chosen by this court to pass on that issue.

Affirmed.

YETKA, Justice (dissenting).

While I agree that this case, in my opinion, does not pose a serious constitutional challenge to Rule II(4) of the Supreme Court Rules for Admission to the Bar, I believe the facts of this situation justify our waiving the requirement that the applicant graduate from an ABA accredited law school.

The avowed purpose of any set of rules for admission to practice is to ensure qualified lawyers to serve the public. While as a general rule it may be true that legal training at an ABA-accredited law school offers the best chance that we will graduate qualified legal scholars, we have no assurances that following that route will attain that lofty objective. Thus, we have exceptions even under the present system, as evidenced by the many petitions for suspension and disbarment that come before this court every month, many of whom are lawyers who have graduated from the best law schools in the country. Our rules should and do allow exceptions, and I believe this to be such a case.

While it is true that Western State is not ABA-accredited we have these assurances that we would not be taking an undue risk in allowing petitioner to take the exam in Minnesota:

(1) As the majority opinion points out, Illinois, Iowa, Nevada and Wisconsin have all allowed Western State graduates to take their bar examination, in addition to California.

(2) Applicant has already taken and passed the California Bar Examination, and, in fact, has been invited to join the American Bar Association.

(3) Western State has been accredited by both the California Committee of Bar Examiners and by the Western Association of Schools and Colleges.

(4) While the majority opinion makes much of the fact that the Western Association of Schools and Colleges cannot be said to have much expertise in evaluating legal education because Western State is the only law school that

it has accredited, it can also be argued that since California has a number of law schools, both ABA accredited and non-ABA accredited, the fact that the Association has accredited Western State is significant proof that the Association was impressed with its credentials.

Until the 20th century, most lawyers learned their profession while working as clerk in the various law firms and were not graduates of law schools at all. Many of the outstanding lawyers of the 18th and 19th centuries were products of such a course. As was brought out in oral argument, the state of Virginia perhaps still permits a legal education to be secured in that manner.

While modern requirements make a more formal training desirable, no rule should be drawn so tightly as to deny application in an exceptional case. The majority argues that petitioner knew when he left an ABA-accredited school to go to Western that he was taking a chance on not being permitted to take our bar examination. So what? Is our objective to punish for nonconformity or to test for competency? Moreover, Hansen may have been told by Western that it fully expected to be accredited prior to his graduation. After all, steps were in motion at that time within the ABA to permit proprietary schools to petition for and receive recognition.

I regret to see Minnesota refuse applicant's petition because there is much to be said for a rule that would allow any applicant who has passed the bar examination of any other state and has been admitted to practice in that state to take the bar examination of any other state in the union. Why these barriers? What state or states do we fear are so lenient in their admission standards that we will not permit their lawyers to even take our examination? If our examination is tough enough to screen out the unqualified applicants, we need not have concern for anyone who wishes to take it. And if it is not tough enough to do so, there is little reason for the existence of the bar examination at all.

What precedent do we fear will be set by allowing petitioner to take the examination? I disagree that we would be holding that every applicant from every law school would have the right to take our examination. Our waiving

the rule in this case would mean simply that we are holding that an applicant who graduated from a law school approved by the California Committee of Bar Examiners, by the Western Association of Schools and Colleges, and who successfully passed the California Bar Examination, and who is a Minnesota native can take our bar examination-the holding would stand for no more.

There must always be a place in our society for the maverick--the doubter, the one who pushes and questions and challenges, or our society will have lost something, a part of our past that will be irretrievably lost. In our zeal for uniformity we should avoid evolving ourselves into a system like those bureaucratic nations of the old world that sent us so many of their discontented immigrants.

I would waive the rule and allow petitioner to take our bar examination.

OTIS, Justice (dissenting).

I join in the dissent of Mr. Justice Yetka. Western had no opportunity to become accredited prior to 1977, by which time Bryan Hansen was ready to graduate. This is not a case where the ABA has declined to approve a law school, and we are not justified in assuming Western fails to meet ABA standards. All of the evidence strongly suggests Hansen is a highly qualified candidate for admission to our bar. We establish no precedent by permitting him to sit for the examination since the ABA ban on accrediting proprietary schools has now been lifted. This is not a proper case for us to adopt a rigid and inflexible attitude to vindicate our rules.

STATE OF MINNESOTA

IN SUPREME COURT

In re Application of Bryan M. Hansen to Write the Minnesota Bar Examination.

Supreme Court No. 48674

ORDERED that the time within which the petition for rehearing must be served and filed herein, be and it is hereby extended to include November 28, 1978 hearing.

Dated November 20, 1978

Associate Justice

STATE OF MINNESOTA

OFFICE OF CLERK OF SUPREME COURT

St. PAUL, MINN.

November 28, 1978

In re Application of
Bryan M. Hansen to Write
the Minnesota Bar Examination.

Supreme Court No. 48674

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

Application for reargument having been filed herein all further proceedings, except taxation of costs are stayed pending its determination.

Yours respectully,
MAE SHERMAN,
Clerk Supreme Court.

STATE OF MINNESOTA

OFFICE OF CLERK OF SUPREME COURT

ST. PAUL, MINN.

December 27, 1978

In re Application of
Bryan M. Hansen to Write
the Minnesota Bar Examination.

Supreme Court No. 48674

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied vacated.

Yours respectully,

John McCarthy

Clerk Supreme Court

VINCENT JANTZ
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Counsel for Appellant

IN THE SUPREME COURT

OF THE STATE OF MINNESOTA

BRYAN M. HANSEN, Appellant, v. MINNESOTA STATE BOARD OF BAR EXAMINERS, et al., Appellees.	NO. 48674

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

NOTICE IS HEREBY GIVEN that BRYAN M. HANSEN, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Minnesota, dismissing the petition for rehearing, entered in this action on December 27, 1978. This appeal is taken pursuant to 28 U.S.C. §1257 (2).

The following question is presented by this appeal:

Whether the denial of an individual's application to sit for the Minnesota bar examination, on the sole ground that he did graduate from a law school approved by the American Bar Association, violates the due process and equal protection guarantees of the Fourteenth Amendment of the United States Constitution.

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PROOF OF SERVICE

I, Vincent Jantz, Counsel of Record for Bryan M. Hansen, appellant herein, depose and say that on this the 9th day of March, 1979, three copies of the Notice of Appeal were mailed, postage prepaid, to the following:

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In the County of Orange,
State of California, subscribed
and sworn to before me on this
9th day of March, 1979.

Supreme Court, U. S.
FILED
APR 12 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

SPRING TERM 1979

No. 78-1417

BRYAN M. HANSEN,

Appellant,

vs.

MINNESOTA STATE BOARD OF BAR EXAMINERS,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

MOTION TO DISMISS APPEAL

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IN THE

Supreme Court of the United States

SPRING TERM 1979

No. ———

BRYAN M. HANSEN,

Appellant,

vs.

MINNESOTA STATE BOARD OF BAR EXAMINERS,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

MOTION TO DISMISS APPEAL

Appellee, pursuant to Rule 16(1)b of the Rules of the Supreme Court of the United States, moves for an Order of this Court dismissing the appeal herein on the following grounds: (1) The appeal does not present a substantial federal question; (2) the judgment of the Supreme Court of the State of Minnesota rests on an adequate non-federal basis.

STATEMENT OF FACTS

The appellee adopts the statement of facts set out by the Minnesota Supreme Court in its opinion dated No-

vember 9, 1978 (Appellant's Jurisdictional Statement pp. 11-14).

QUESTIONS PRESENTED

May a state establish standards for admission to the practice of law which include the requirements that the applicant graduate from an approved law school *and* pass a written examination?

May a state refuse admission to the practice of law on an equity basis where the applicant, with full knowledge, failed to act in accordance with the rules of admission?

ARGUMENT

I.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION.

This Court long ago determined that the State of Minnesota has the power to set standards of admission for the professions. In *Graves v. Minnesota,* 272 U.S. 425 (1926), the appellant challenged the Minnesota statute requiring that applicants for a dentist's license acquire a diploma from an *approved* dental college prior to examination by the Board of Dental Examiners. The appellant argued the statute was unreasonable, arbitrary and discriminatory, and violated the Due Process Clause and other provisions of the Fourteenth Amendment of the United States Constitution. To that argument, this Court stated:

> Clearly the fact that an applicant for a license holds a diploma from a reputable dental college has a direct and substantial relation to his qualification to practice dentistry. We cannot say the state is acting arbitrarily or unreasonably when, in the exercise of its judgment, it determines that the holding of such a diploma is a necessary qualification for the practice to dentistry; or that the distinction made in the granting of licenses between applicants who hold such diplomas and those who do not, is a classification which has no real or substantial basis. And the constitutionality of the statute must be sustained." (pp. 428-429.)

This Court has also refused to treat the requirement of graduation from an approved law school prior to admission to the bar as a substantial federal question, *Murphy v. Pennsylvania State Board of Bar Examiners,* 47 U.S.L.W. 3544 (U.S. Feb. 21, 1979) *appeal dismissed and cert. denied.*

The appellant has presented arguments drawn principally from three cases as the basis for jurisdicion in this matter. All of the cases can be distinguished from the instant fact situation and the appellant has failed to present a substantial federal question for consideration by this Court.

The appellant first makes reference to *Schware v. New Mexico Board of Bar Examiners,* 353 U.S. 232 (1957) and cites it in favor of the proposition that:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process or equal protection clause of the Fourteenth Amendment." (pp. 238-239)

This goes without saying, but the Court in *Schware* also held that the state may regulate an occupation affecting the public interest by establishing qualifications

which are reasonably related to insuring the competency of its practitioners. As the appellant's Jurisdictional Statement indicates, the Court in *Schware* concerned itself with New Mexico's refusal to admit the petitioner therein on the basis that he had not demonstrated a "good moral character". While this also is a requirement in Minnesota, it is not the requirement of which is in dispute here. The dispute here centers solely on the educational background of the appellant and therefore the Court's ruling in *Schware* is inapplicable.

The appellant also makes reference to the case *Murphy v. Pennsylvania State Board of Bar Examiners, et al.*, 393 A.2d 369 (Pa. 1978) where the majority opinion refused to allow the applicant to sit for the bar examination because he had not graduated from an ABA approved law school. The appellant herein quoted the dissenting opinion in that case but the appeal of *Murphy* to this Court was dismissed, and thus it would appear the arguments made in the State Court dissenting opinion are now irrelevant. The dismissal of an appeal is a finding on the merits on the basis that it presents no substantial federal question and precludes appeals of identical cases. *Port Authority Bond Holders Protective Committee v. Port of New York Authority*, 387 F.2d 259 (2nd Cir. 1967). Not only were the issues presented in *Murphy* identical to those here, but the appellants in each case attended the same non-accredited law school.

The appellant alleges that the Minnesota decision has somehow precluded his right to travel. Specifically, the appellant makes reference to *Keenan v. Board of Law Examiners*, 317 F.Supp. 1350 (E.D.N.C. 1970) in which the Court ruled North Carolina's one year residency requirement as a condition for taking the bar examination as an unconstitutional infringement of the "right to travel".

Minnesota's rule which requires graduation from an ABA accredited law school does not in any way infringe the appellant's right to travel. The rule does not require the appellant to attend law school in Minnesota since only three of the 166 ABA accredited law schools are located there. Furthermore, Minnesota does not have any residency requirement as in *Keenan*. Minnesota simply requires that the applicant either maintain an office in Minnesota or appoint the Clerk of Court as an agent for service of process. (See Appellant's Jurisdictional Statement pp. 16, 17 (footnote 4) and 24.)

II.

MINNESOTA'S DECISION TO DENY THE APPELLANT'S PETITION FOR ADMISSION TO THE PRACTICE OF LAW RESTS ON AN ADEQUATE NON-FEDERAL BASIS TO PRECLUDE THIS APPEAL.

The appellant alleges that the successful completion of a written bar exam "should be the sole arbiter of who shall practice law". (Appellant's Jurisdictional Statement p. 7.) His argument suggests that regardless of where one attends law school, one's ability to practice in the legal profession can be reasonably tested by a written bar examination. Minnesota has at all relevant times required not only the passing of a written bar examination but also graduation from an approved law school. When presented this argument by the appellant, including the fact of his admission to the California bar, the Minnesota Court stated:

> "Even if one is not a graduate from a law school accredited either by California or the ABA, however, it is still possible to take the California Bar exam. Thus, California appears to utilize its examination as the major form of control over admissions to the bar. The situation in Minnesota is completely different. We use a two-pronged test—graduation from an accredited law school plus passage of the bar examination—to determine whether an attorney should be admitted to practice. Unlike California, we rely primarily on the educational process, and we use the bar examination only to weed out the small number who are unfit to practice law despite their exposure to educational environments of high quality." (Appellant's Jurisdictional Statement, p. 27.)

Thus, regardless of the constitutional questions at hand, Minnesota has the right to establish standards for admission to the bar which are distinct from California. The determination of these standards and the requirement of compliance with them present a non-federal basis for the decision. This is particularly true given the fact that the requirements remained the same throughout the appellant's law school career and he admitted to the Minnesota Court his full knowledge of the requirements. The Minnesota Court specifically found that in equity the appellant could not require Minnesota to take into account his specific situation. The Court stated:

> "He chose to transfer from an ABA approved school to a non-accredited one far away from his home state knowing that this move would pose problems for him if he later wanted to return to Minnesota to practice law. Thus, equity requires no waiver here. Were we to grant the waiver as requested, we would

> have to consider similar requests by students from other non-accredited law schools with chaotic results. Each and every case would have to be decided on its own merits. Undoubtedly, claims would be made as in this case that the applicants had a quality education but without any foundation for such claims by experts chosen by this Court to pass on that issue." (Appellant's Jurisdictional Statement, p. 29.)

Clearly, the appellant placed himself in a position which would not require the Court to act otherwise. As this Court stated in *The Bank of the United States v. The Bank of Georgia,* 10 Wheat. (U.S.) 333 (1825):

> "And in respect to persons equally innocent, where one is bound to know and act upon his knowledge, and the other has no means of knowledge, there seems to be no reason for burdening the latter with any loss and exonoration of the former." (P. 343-344.)

CONCLUSION

For all the foregoing reasons, appellee moves that this appeal be dismissed.

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78-1417

Supreme Court, U. S.
FILED
MAY 1 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SPRING TERM 1979

NO. 78-1471

BRYAN M. HANSEN,

Appellant,

vs.

MINNESOTA STATE BOARD OF BAR EXAMINERS, et al.,

Appellees.

On Appeal From The
Supreme Court of Minnesota

BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

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Table of Authority

CASES:	PAGE
Baxtrom v. Herold, 383 U.S. 107(1966)	2
The Bank of the United States v. The Bank of Georgia,10 Wheat.333(1825)	6
Carrington v. Rash, 380 U.S.89(1965)	3
Graves v. Minnesota, 272 U.S.425(1926)	3
Keenan v. Board of Law Examiners of the State of North Carolina,317 F.Supp. 1350 (1970)	6
Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32 (1928)	3
Paul v. Virginia, 8 Wall. 168 (1869)	4
Royster Guano Co. v. Commonwealth of Virginia,253 U.S. 412 (1920)	3
Sistare v. Sistare, 218 U.S. 1 (1910)	4

RULES:

Rule 16(4)- Rules of the United States Supreme Court	1
Rule II(4)- Rules for Admission to the Bar, Minnesota	3
Rule VIII(1)- Rules for Admission to the Bar, Minnesota	3

STATUTES:

Minnesota Statutes §481.02(6)	4

CONSTITUTIONAL PROVISIONS: United States Constitution; Article IV, sections 1 & 2 14th Amendment, "Equal Protection" clause	3

IN THE

SUPREME COURT OF THE UNITED STATES

SPRING TERM 1979

No. 78-1417

BRYAN M. HANSEN,

Appellant,

v.

MINNESOTA STATE BOARD OF BAR EXAMINERS, et al.,

Appellees.

On Appeal From The Supreme Court of Minnesota

Brief in Opposition to Motion to Dismiss Appeal

Appellant, pursuant to Rule 16(4) of the Rules of the Supreme Court of the United States, presents this Brief in Response to Appellee's Motion to Dismiss Appellant's Appeal.

ISSUES PRESENTED

1. Does the Appeal state a substantial Federal Question?

2. Does the lower court judgment rest on an adequate non-federal basis?

ARGUMENT I

THE APPEAL STATES A SUBSTANTIAL FEDERAL QUESTION.

"In licensing attorneys there is but one constitutionally permissible state objective: the assurance that the applicant is capable and fit to practice law." Keenan v. Board of Law Examiners of the State of North Carolina, 317 F. Supp. 1350, 1359 (1970).

Appellee is correct in stating that this case deals with residency requirements. Yet, it remains one of the few cases to lay out the constitutional tests which bar examinations must meet. In lieu of this, the series of cases backing up the point that, "... Legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause (14th Amendment) does require that, in defining a class subject to legistation, the distinctions that are drawn have 'some relevance to the purpose for which the classification is made'"; have great relevance and impact. Baxtrom v. Harold, 383 U.S. 107, 111(1966);

Carrington v. Rash 380 U.S. 89, 93 (1965); Louisville Gas v. Coleman, 277 U.S. 32, 37 (1928); Royster Guano Co. v. Commonwealth of Virginia, 253 U.S. 412, 415 (1920).

Minnesota has created two classes of applicants with its Rule II (4), Rules For Admission To The Bar. The classes are those who have graduated from approved law schools (ABA), and those who have not. When this Rule is read in conjunction with Rule VIII of those same rules, we see a very apparent constitutional infirmity.

Rule VIII(1) requires that attorneys from other states also be graduates of ABA approved Law Schools. This means that legal experience and accomplishments are not considered. This statute is over-inclusive and is arbitrary and capricious. It has the effect of keeping eminently qualified attorneys out of the state.

The Graves v. Minnesota,272 U.S. 425 (1926) case was cited by the Appellee. This case interpreted a Minnesota statute, now nearly a century old, and its requirement that prospective Dentists must graduate from approved Dental Schools. A careful reading of the lower courts ruling in that case; Graves v. State of Minnesota, 201 N.W. 933 (1925); gives no indication that Graves did in fact ever attend any Dental School. This case is easily differentiated, from the case at bar, by its facts.

Article IV., of the Constitution of the United States, states in pertinent part that, "Full Faith and Credit shall be given in each State to the public Acts,

Records and Judicial Proceedings of every other State." (Sec. 1) "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." (Sec. 2)

The court has utilized these sections to guarantee that money judgments enforceable in one state are given effect in another. Sistare v. Sistare, 218 U.S. 1 (1910). That citizens of one state are insured the same rights to happiness and property as those of another state, and they are secured the equal protection of their laws. Paul v. Virginia, 8 Wall. 168, 180 (1869).

The state of California has made its judgment that the Appellant is qualified to practice law in California. Minnesota will allow Appellant to appear in its courts, pro hac vice, Minnesota Statutes §481., 02(6). Leaving within the judges discretion, the issue of Petitioners' competence. If busy trial court judges are able to pass on the competency of attorneys, then how can the Minnesota State Board of Bar Examiners, who were established to do this, find the task over burdensome? Within this reasonable context we suggest that the Minnesota Statutes in question, do work an unnecessary hardship and are inconsistent with Article IV, Section 1 and 2 of the United States Constitution, and are therefore invalid.

ARGUMENT II

THE JUDGMENT OF THE SUPREME COURT OF MINNESOTA DOES NOT REST ON AN ADEQUATE NON-FEDERAL BASIS.

Appellee has alleged that Minnesota utilizes a two-pronged approach to control admissions to the bar. Graduation from an ABA approved Law School, and its bar examination. It is further argued that appellant chose to attend a non-ABA approved Law School and he therefore failed to comply with the requirements and that this presents a non-federal basis for the decision. In effect it is argued by the Appellee, that the United States Supreme Court is precluded from interference with Minnesota's approach to control admissions to its Bar.

Appellant reiterates the argument stated in his Jurisdictional Statement, that Minnesota has never set guidelines for the quality and content of Law School instruction. Instead the legislature has delegated that duty to the American Bar Association. Appellee has pointed to no specific weakness in Appellant's education and preparation in becoming an attorney. Instead, Appellee has only pointed out that Appellant's Law School has never sought approval by the A.B.A.

Appellant contends that while Minnesota may establish its own standards, these standards may not be framed in such an over-broad manner as to preclude an entire

class of applicants who have proven their competence, from even taking the bar examination in Minnesota.

This class, of which Appellant is a member, is composed of graduates of a Law School approved by the State Bar of California, and further, these graduates have been admitted to practice in a state. A statute which excludes an entire class of qualified people, cannot rest on an adequate non-federal basis. Administrative inconvenience in determining the qualifications of each of the members of this class should not stand in the way of setting up a procedure for screening these applicants. This last point was fully explored in Keenan v. Board of Bar Examiners (supra) at page 1360.

Appellant concedes his awareness of the requirements for graduation from an ABA approved law school as a general applicant for the Minnesota Bar examination. At the time he embarked upon his law school matriculation he was also aware that a petition for waiver of this requirement was possible, but of uncertain results. Barring the approval of such a waiver, Appellant could look forward to the possibility of admission on motion following five years of practice in another state. This possibility has been extinguished by the State's action in amending its rules on March 30, 1977 (just two (2) months prior to Appellants graduation) to require graduation from an ABA approved Law School prior to admission on motion. Such action could not be foreseen by Appellant. This Court's decision in The Bank of the United States v. The Bank of Georgia, 10 Wheat.

(U.S.) 333 (1825) is quite appropriate to Appellants Argument, in that Appellant was "equally innocent," had "no means of knowledge" of the change at the time he entered Law School and to burden him with the "loss would indeed be inequitable."

CONCLUSION

The issues presented by the appeal have never been directly addressed by the court. For the reasons stated in this brief and in our Jurisdictional Statement, we ask that the Appellees' Motion to Dismiss our Appeal be denied, and that our case be heard by the court.

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Respectfully submitted,

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